

# NEW MEXICO LEGISLATIVE ETHICS GUIDE



**Legislative Council Service**  
*Revised September 2007*  
*Includes Gift Act Updates*

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Three sources of authority govern the conduct of legislators: the constitution of New Mexico, statutes and the rules of the house and senate. This guide captures the essence of the law or rule cited as it applies to legislators and legislative candidates. Members are strongly urged to consult the specific law or rule cited.

All legislators should become familiar with the following acts, which appear in full in the *Appendix* section of this guide.

**Governmental Conduct Act**

(Chapter 10, Article 16 NMSA 1978)

**Lobbyist Regulation Act**

(Chapter 2, Article 11 NMSA 1978)

**Campaign Reporting Act**

(Chapter 10, Article 16A NMSA 1978)

**Financial Disclosure Act**

(Sections 10-16A-1 through 10-16A-8 NMSA 1978)

**Gift Act**

(Chapter 10, Article 16B NMSA 1978)

In addition, legislators who do business with the state should also pay particular attention to the **Procurement Code** (Sections 13-1-28 through 13-1-199 NMSA 1978), which applies to many state purchases.

The rules of the house and the senate govern the specific conduct of house and senate members. Each house adopts its own rules. Copies of the rules are included in the legislative handbook and are posted on the legislature's web site ([www.legis.state.nm.us](http://www.legis.state.nm.us)).

This guide divides the parameters of legislative conduct into two categories: what you must do (required conduct) and what you must not do (prohibited conduct). What you must do is generally related to campaign reporting and financial disclosure. What you must not do generally relates to the jobs you may not hold, the contracts into which you may not enter and the ways in which you must separate your legislative life from your business and your family life.

You may contact any of the following agencies for further assistance with ethics questions.

Attorney General Gary King  
408 Galisteo Street  
Santa Fe, New Mexico 87504  
(505) 827-6000

Secretary of State Mary Herrera  
State Capitol North, Suite 300  
Santa Fe, New Mexico 87503  
(505) 827-3600

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411 State Capitol  
Santa Fe, New Mexico 87501  
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## **REQUIRED CONDUCT**

### ***Campaign Expenditures and Contributions***

Legislative candidates shall file reports of campaign expenditures and contributions annually on the second Monday in May. In an election year, candidates shall also file on the second Monday in October, the Thursday before a primary or general election and 30 days after the election. In addition, any contributions of \$500 or more received in the week before a primary or general election must generally be reported within 24 hours (Subsections A and B of Section 1-19-29 NMSA 1978). Unopposed candidates need only file the reports due on the second Monday in May and 30 days after an election (Subsection D of Section 1-19-29 NMSA 1978).

### ***Employment***

Members shall attempt to ensure that their private employment does not impair their impartiality (Senate Rule 26-1(B)(2), House Rule 26-1(B)(2)).

### ***Ethics***

Members shall attend a minimum of two hours of ethics continuing education and training biennially (Subsection E of Section 10-16-11 NMSA 1978, Senate Rule 26-2, House Rule 26-2).

Members shall sign a code of ethics (Senate Rule 26-2, House Rule 26-2).

### ***Financial Disclosure - Candidates***

Each legislative candidate shall file a financial disclosure statement upon becoming a candidate (Subsection A of Section 10-16A-3 NMSA 1978).

### ***Financial Disclosure - Members***

Members shall, during the month of January, file financial disclosure statements setting out for themselves and their spouses all sources of gross income greater than \$5,000, a general description of New Mexico real estate owned, New Mexico business interests of \$10,000 or more, memberships on for-profit boards, the name of each state agency that was sold \$5,000 or more in goods or services in the previous year and each state agency before which they represented or assisted clients in the course of employment (Subsections A and C of Section 10-16A-3 NMSA 1978).

### ***Lobbyist Expenditures***

Lobbyists and lobbyists' employers shall report every expenditure, even if unrelated to lobbying, and political contributions made on behalf of members and candidates (Subsection A of Section 2-11-6 NMSA 1978). Although members face no requirement under this section, they should be aware of the requirement on lobbyists and lobbyists' employers.

### ***Public Service***

Members shall conduct themselves in a manner that justifies the confidence placed in them by the people and maintain the integrity of and discharge ethically the high responsibilities of

public service (Subsection B of Section 10-16-3 NMSA 1978, Senate Rule 26-1(A), House Rule 26-1(A)).

***Public Trust***

Members shall treat their government positions as public trusts and use the powers and resources of their offices only to advance the public interest (Subsection A of Section 10-16-3 NMSA 1978).

***Voting - House***

Representatives shall vote on each question unless excused by a majority vote (House Rule 7-5).

***Voting - Senate***

Senators shall vote on each question unless they have a direct personal or pecuniary interest in the question (Senate Rule 7-5).

## **PROHIBITED CONDUCT**

### ***Appearance Before a State Agency***

Members shall not appear for, assist or represent anyone before a state agency, unless without compensation or for the benefit of a constituent, except attorneys or other professionals engaged in their professions, and in those cases, members shall refrain from references to their legislative capacities and from communications on legislative stationery (Subsection B of Section 10-16-9 NMSA 1978, Senate Rule 26-1(C)(1), House Rule 26-1(C)(1)).

### ***Business Cards***

Members may distribute legislative business cards in virtually any situation, because business cards serve only to introduce the legislator, but members should not distribute legislative business cards when they are campaigning (Interim Legislative Ethics Committee, Advisory Opinion No. 97-1).

### ***Business with the State or a Municipality***

Members shall not be directly or indirectly interested in any contract with the state or a municipality authorized by any law passed during the legislators' terms and for one year thereafter (Article 4, Section 28 of the constitution of New Mexico).

Members and their families shall not enter into any contract with a state agency unless the contract is awarded in accordance with the Procurement Code, except they shall not be eligible for sole source or small purchase contracts (Subsection A of Section 10-16-9 NMSA 1978, Senate Rule 26-1(D)(1), House Rule 26-1(D)(1)).

Members shall not represent another person in a sale to a state agency unless the transaction occurs pursuant to the Procurement Code (Senate Rule 26-1(C)(2), House Rule 26-1(C)(2)).

### ***Campaigns - Funds and Contributions***

Candidates shall not use campaign funds except for expenditures for their own campaigns and other campaigns covered by the Campaign Reporting Act; donations to the state general fund; donations to charitable, educational, religious or governmental organizations; donations to a political party; or refunds to contributors, except that members may also use campaign funds for expenditures that are reasonably related to performing the duties of the office, except personal and legislative session living expenses (Subsection A of Section 1-19-29.1 NMSA 1978).

Members and candidates shall not solicit campaign contributions between January 1 and adjournment of a regular session, nor from the time a proclamation has been issued calling a special session and the adjournment of that session (Subsection A of Section 1-19-34.1 NMSA 1978).

Lobbyists and lobbyists' employers shall not make campaign contributions to legislators or legislative candidates between January 1 and adjournment of a regular session, nor from the time

a proclamation is issued calling for a special session and adjournment of that session (Subsections B and C of Section 2-11-8.1 NMSA 1978).

Members shall not solicit or receive contributions for any purpose on the floor or in the lobby of the senate or the house (Senate Rule 1-5, House Rule 1-5).

### ***Campaigns - Lobbyists***

Lobbyists shall not serve as campaign chairs, treasurers or fundraising chairs for candidates (Subsection A of Section 2-11-8.1 NMSA 1978).

### ***Civil Office***

Members shall not, during the term for which they were elected, be appointed to any civil office in the state, nor shall they within one year thereafter be appointed to any civil office created, or the emoluments of which were increased, during such term (Article 4, Section 28 of the constitution of New Mexico).

### ***Compensation and Honoraria***

Members shall not receive compensation as a state officer or employee or compensation unauthorized by law for rendering services, advice or assistance as legislators (Section 2-1-3 NMSA 1978, Senate Rule 26-1(B)(3), House Rule 26-1(B)(3)).

Members shall neither request nor receive an honorarium of money, or any other thing of value in excess of \$100, for a speech or service that relates to the performance of public duties (Section 10-16-4.1 NMSA 1978).

### ***Confidential Information***

Members shall not use confidential information acquired by virtue of their offices for private gain (Section 10-16-6 NMSA 1978, Senate Rule 26-1(D)(3), House Rule 26-1(D)(3)).

### ***Employment***

Members shall not accept employment if the members know that it is being afforded them with the intent to influence their conduct (Senate Rule 26-1(B)(5), House Rule 26-1(B)(5)).

### ***Kickbacks***

Members shall not solicit or receive a kickback, bribe or rebate in exchange for referring business to a person who may be paid with public money (Section 30-41-1 NMSA 1978).

### ***Money, Gifts and Things of Value***

Members shall not vote or use their influence for or against any pending matter in consideration of money or any other thing of value, or solicit money or any other thing of value, for their votes or influence (Article 4, Section 39 of the constitution of New Mexico).

Members shall not accept anything of value that improperly influences an official act (Senate Rule 26-1(B)(1), House Rule 26-1(B)(1)).

Members, their spouses and dependent children may not accept a gift worth more than \$250 from lobbyists, lobbyists' clients, persons doing business or seeking to do business with the legislature or persons who will be financially affected by the member's official duties in a way that is greater than the effect on the public generally or a substantial class of persons to which the donor belongs (Subsection A of Section 10-16B-3 NMSA 1978).

A lobbyist, lobbyist's client or government contractor shall not give gifts worth more than \$1,000 in a year to a member (Subsection B of Section 10-16B-3 NMSA 1978).

Members shall not accept gifts, other than lawfully collected campaign contributions, from persons affected by legislation where it is known that the purpose of the donation is either to influence the member or to reward the member's actions (Senate Rule 26-1(B)(4), House Rule 26-1(B)(4)).

### ***Railroad Travel***

Members shall not use a pass for or receive transportation over any railroad upon terms not open to the public (Article 4, Section 37 of the constitution of New Mexico).

### ***Special Privileges and Private Gain***

Members shall not grant to, or obtain a special privilege or exemption for, themselves or others if the privilege or exemption is not readily available to members of the general community or class to which the beneficiary belongs (Senate Rule 26-1(D)(2), House Rule 26-1(D)(2)).

Members shall not use the powers and resources of their offices to obtain personal benefits or pursue private interests incompatible with the public interest (Subsection A of Section 10-16-3 NMSA 1978).

Members shall not use their offices for private gain (Senate Rule 26-1(A), House Rule 26-1(A)).

### ***Stationery***

Members shall use official legislative stationery, which is stationery that contains the state seal, only for matters that relate to the conduct of legislative business (Interim Legislative Ethics Committee, Advisory Opinion Nos. 96-1 and 97-1).

Members should refrain from using official legislative stationery to write letters to state agencies on behalf of constituents who are immediate family members, except when the immediate family member is a part of a larger class of similarly situated constituents (Interim Legislative Ethics Committee, Advisory Opinion No. 97-2).

## **PROCEDURES**

In addition to civil and criminal procedures, which may be initiated by the secretary of state, the attorney general or a district attorney, there are several other ways in which action against a member or candidate may be initiated.

### ***Complaints***

Any legislator or member of the public may file a written, sworn complaint with the legislative council alleging that a legislator has acted unethically (Subsection D of Section 2-15-9 NMSA 1978). The complaint will be referred to the interim legislative ethics committee.

Any person may file a written complaint with the secretary of state alleging that provisions of the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act have been violated (Subsection A of Section 10-16A-6 NMSA 1978, Subsection B of Section 1-19-34.4 NMSA 1978, Subsection B of Section 2-11-8.2 NMSA 1978).

Any senator may file a complaint with the senate ethics committee alleging unethical conduct by a senator (Senate Rule 9-13-3).

Any member of the public and any representative may file a complaint with the house rules and order of business committee alleging unethical conduct by a representative (House Rule 9-13-2).

### ***Ethics Committee Advisory Opinions***

Any legislator may seek an advisory opinion from the interim legislative ethics committee or, during a session, the house rules and order of business committee or the senate ethics committee (Subsection C of Section 2-15-9 NMSA 1978, Senate Rule 9-13-2, House Rule 9-13-1).

### ***Expulsion***

Any member may move under Article 4, Section 11 of the constitution of New Mexico for the expulsion of another member upon a vote of two-thirds of the chamber's membership.

# **Appendix**

**Governmental Conduct Act**

**10-16-1. Short title.** (1993)

Chapter 10, Article 16 NMSA 1978 may be cited as the "Governmental Conduct Act".

**10-16-2. Definitions.** (2007)

As used in the Governmental Conduct Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "confidential information" means information that by law or practice is not available to the public;

C. "employment" means rendering of services for compensation in the form of salary as an employee;

D. "family" means an individual's spouse, parents, children or siblings, by consanguinity or affinity;

E. "financial interest" means an interest held by an individual or the individual's family that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

F. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

G. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage but excludes legislators;

H. "standards" means the conduct required by the Governmental Conduct Act;

I. "state agency" means any branch, agency, instrumentality or institution of the state; and

J. "substantial interest" means an ownership interest that is greater than twenty percent.

**10-16-3. Ethical principles of public service; certain official acts prohibited; penalty.** (2007)

A. A legislator, public officer or employee shall treat the legislator's, public officer's or employee's government position as a public trust. The legislator, public officer or employee shall use the powers and resources of public office only to advance the public interest and not to obtain personal benefits or pursue private interests incompatible with the public interest.

B. Legislators, public officers and employees shall conduct themselves in a manner that justifies the confidence placed in them by the people, at all times maintaining the integrity and discharging ethically the high responsibilities of public service.

C. Full disclosure of real or potential conflicts of interest shall be a guiding principle for determining appropriate conduct. At all times, reasonable efforts shall be made to avoid undue influence and abuse of office in public service.

D. No legislator, public officer or employee may request or receive, and no person may offer a legislator, public officer or employee, any money, thing of value or promise thereof that is

conditioned upon or given in exchange for promised performance of an official act. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

**10-16-3.1. Prohibited political activities. (2007)**

Public officers and employees are prohibited from:

A. directly or indirectly coercing or attempting to coerce a state officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for a political purpose;

B. threatening to deny a promotion or pay increase to an employee who does or does not vote for certain candidates, requiring an employee to contribute a percentage of the employee's pay to a political fund, influencing a subordinate employee to purchase a ticket to a political fundraising dinner or similar event, advising an employee to take part in political activity or similar activities; or

C. violating the officer's or employee's duty to not use state property, or allow its use, for other than authorized purposes.

**10-16-4. Official act for personal financial interest prohibited; disqualification from official act; providing a penalty. (2007)**

A. It is unlawful for a public officer or employee to take an official act for the primary purpose of directly enhancing the public officer's or employee's financial interest or financial position. Any person who knowingly and willfully violates the provisions of this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

B. A public officer or employee shall be disqualified from engaging in any official act directly affecting the public officer's or employee's financial interest.

**10-16-4.1. Honoraria prohibited. (1993)**

No legislator, public officer or employee may request or receive an honorarium for a speech or service rendered that relates to the performance of public duties. For the purposes of this section, "honorarium" means payment of money, or any other thing of value in excess of one hundred dollars (\$100), but does not include reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service, or payment or compensation for services rendered in the normal course of a private business pursuit.

**10-16-4.2. Disclosure of outside employment. (2007)**

A public officer or employee shall disclose in writing to the supervisor of the officer or employee, or in the event there is no supervisor, to the secretary of state, all employment engaged in by the officer or employee other than the employment with the state.

**10-16-5. Repealed. (1993)**

**10-16-6. Confidential information. (2007)**

No legislator, public officer or employee shall use or disclose confidential information acquired by virtue of the legislator's, public officer's or employee's state employment or office for the legislator's, public officer's, employee's or another's private gain.

**10-16-7. Contracts involving public officers or employees. (2007)**

A state agency shall not enter into a contract for services, construction or items of tangible personal property with a public officer or employee of the state, with the family of the public officer or employee or with a business in which the public officer or employee or the family of the public officer or employee has a substantial interest unless the public officer or employee has disclosed the public officer's or employee's substantial interest and unless the contract is awarded pursuant to the Procurement Code except that the potential contractor shall not be eligible for a sole source or small purchase contract; provided that this section does not apply to a contract of official employment with the state or to contracts made pursuant to the provisions of the University Research Park Act. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this section.

**10-16-8. Contracts involving former public officers or employees; representation of clients after government service. (1993)**

A. A state agency shall not enter into a contract with, or take any action favorably affecting, any person or business that is:

(1) represented personally in the matter by a person who has been a public officer or employee of the state within the preceding year if the value of the contract or action is in excess of one thousand dollars (\$1,000) and the contract is a direct result of an official act by the public officer or employee; or

(2) assisted in the transaction by a former public officer or employee of the state whose official act, while in state employment, directly resulted in the agency's making that contract or taking that action.

B. A former public officer or employee shall not represent a person in his dealings with the government on a matter in which the former public officer or employee participated personally and substantially while a public officer or employee.

C. For a period of one year after leaving government service or employment, a former public officer or employee shall not represent for pay a person before the government agency at which the former public officer or employee served or worked.

**10-16-9. Contracts involving legislators; representation before state agencies. (2007)**

A. A state agency shall not enter into a contract for services, construction or items of tangible personal property with a legislator, the legislator's family or with a business in which the legislator or the legislator's family has a substantial interest unless the legislator has disclosed the legislator's substantial interest and unless the contract is awarded in accordance with the provisions of the Procurement Code, except the potential contractor shall not be eligible for a sole source or small purchase contract. A person negotiating or executing a contract on behalf of a state agency shall exercise due diligence to ensure compliance with the provisions of this subsection.

B. A legislator shall not appear for, represent or assist another person in a matter before a state agency, unless without compensation or for the benefit of a constituent, except for legislators who are attorneys or other professional persons engaged in the conduct of their professions and, in those instances, the legislator shall refrain from references to the legislator's legislative capacity except as to matters of scheduling, from communications on legislative stationery and from threats or implications relating to legislative actions.

**10-16-10. Repealed. (1993)**

**10-16-11. Codes of conduct. (2003)**

A. By January 1, 1994, each elected statewide executive branch public officer shall adopt a general code of conduct for employees subject to his control. The New Mexico legislative council shall adopt a general code of conduct for all legislative branch employees. The general codes of conduct shall be based on the principles set forth in the Governmental Conduct Act.

B. Within thirty days after the general codes of conduct are adopted, they shall be given to and reviewed with all executive and legislative branch officers and employees. All new public officers and employees of the executive and legislative branches shall review the employees' general code of conduct prior to or at the time of being hired.

C. The head of every executive and legislative agency and institution of the state may draft a separate code of conduct for all public officers and employees in that agency or institution. The separate agency code of conduct shall prescribe standards, in addition to those set forth in the Governmental Conduct Act and the general codes of conduct for all executive and legislative branch public officers and employees, that are peculiar and appropriate to the function and purpose for which the agency or institution was created or exists. The separate codes, upon approval of the responsible executive branch public officer for executive branch public officers and employees or the New Mexico legislative council for legislative branch employees, govern the conduct of the public officers and employees of that agency or institution and, except for those public officers and employees removable only by impeachment, shall, if violated, constitute cause for dismissal, demotion or suspension. The head of each executive and legislative branch agency shall adopt ongoing education programs to advise public officers and employees about the codes of conduct. All codes shall be filed with the secretary of state and are open to public inspection.

D. Codes of conduct shall be reviewed at least once every four years. An amended code shall be filed as provided in Subsection C of this section.

E. All legislators shall attend a minimum of two hours of ethics continuing education and training biennially.

**10-16-12. Repealed. (1993)**

**10-16-13. Prohibited bidding. (2007)**

No state agency or political subdivision of the state shall accept a bid or proposal from a person who directly participated in the preparation of specifications, qualifications or evaluation criteria on which the specific competitive bid or proposal was based. A person accepting a bid or

proposal on behalf of a state agency or political subdivision of this state shall exercise due diligence to ensure compliance with this section.

**10-16-13.1. Education and voluntary compliance. (1993)**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Governmental Conduct Act of those duties. This includes advising all those persons at least annually of that act's ethical principles.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Governmental Conduct Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter. Referrals for civil enforcement of that act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

**10-16-13.2. Certain business sales to state agencies and their employees prohibited. (2007)**

A. A public officer or employee shall not sell or be a party to a transaction to sell goods, services, construction or items of tangible personal property directly or indirectly, through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to the state agency with which the public officer or employee is employed. It is not a violation of this subsection if the public officer or employee employed by the state agency in good faith is not aware of:

(1) the substantial interest held by the public officer or employee or the public officer's or employee's family in the business that is selling or engaged in a transaction to sell goods, services, construction or items of tangible personal property to the state agency by which the public officer or employee is employed; or

(2) the sale of or the transaction to sell goods, services, construction or items of tangible personal property by the public officer's or employee's family or by a business in which the public officer or employee or the public officer's or employee's family has a substantial interest to the state agency by which the public officer or employee is employed.

B. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to an employee supervised by the public officer or employee. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to an employee supervised by the public officer or employee. The provisions of this subsection shall not apply if the supervised employee initiates the sale. It is not a violation of this subsection if a public officer or employee, in good faith, is not aware that the employee to whom the goods, services, construction or items of tangible personal property are being sold is under the supervision of the public officer or employee.

C. A public officer or employee shall not sell, offer to sell, coerce the sale of or be a party to a transaction to sell goods, services, construction or items of tangible personal property, directly or indirectly through the public officer's or employee's family or a business in which the public officer or employee has a substantial interest, to a person over whom the public officer or

employee has regulatory authority.

D. A public officer or employee shall not receive a commission or shall not profit from the sale or a transaction to sell goods, services, construction or items of tangible personal property to a person over whom the public officer or employee has regulatory authority.

E. A public officer or employee shall not accept from a person over whom the public officer or employee has regulatory authority an offer of employment or an offer of a contract in which the public officer or employee provides goods, services, construction, items of tangible personal property or other things of value to the person over whom the public officer or employee has regulatory authority.

**10-16-13.3. Prohibited contributions; financial service contractors. (2007)**

A. A business that contracts with a state agency to provide financial services involving the investment of public money or issuance of bonds for public projects shall not knowingly contribute anything of value to a public officer or employee of that state agency who has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state.

B. A public officer or employee of a state agency that has authority over the investment of public money or issuance of bonds, the revenue of which is used for public projects in the state, shall not knowingly accept a contribution of anything of value from a business that contracts with that state agency to provide financial services involving the investment of public money or issuance of bonds for public projects.

C. For the purposes of this section:

(1) "anything of value" means any money, property, service, loan or promise, but does not include food and refreshments with a value of less than one hundred dollars (\$100) consumed in a day; and

(2) "contribution" means a donation or transfer to a recipient for the personal use of the recipient, without commensurate consideration.

**10-16-14. Enforcement procedures. (1993)**

A. The secretary of state may refer suspected violations of the Governmental Conduct Act to the attorney general, district attorney or appropriate state agency or legislative body for enforcement. If a suspected violation involves the office of the secretary of state, the attorney general may enforce that act. If a suspected violation involves the office of the attorney general, a district attorney may enforce that act.

B. Violation of the provisions of the Governmental Conduct Act by any legislator is grounds for discipline by the appropriate legislative body.

C. If the attorney general determines that there is sufficient cause to file a complaint against a public officer removable only by impeachment, he shall refer the matter to the house of representatives of the legislature. If within thirty days after the referral the house of representatives has neither formally declared that the charges contained in the complaint are not substantial nor instituted hearings on the complaint, the attorney general shall make public the nature of the charges, but he shall make clear that the merits of the charges have never been determined. Days during which the legislature is not in session shall not be included in

determining the thirty-day period.

D. Violation of the provisions of the Governmental Conduct Act by any public officer or employee, other than those covered by Subsection C of this section, is grounds for discipline, including dismissal, demotion or suspension. Complaints against executive branch employees may be filed with the agency head and reviewed pursuant to the procedures provided in the Personnel Act. Complaints against legislative branch employees may be filed with and reviewed pursuant to procedures adopted by the New Mexico legislative council. Complaints against judicial branch employees may be filed and reviewed pursuant to the procedures provided in the judicial personnel rules.

E. Subject to the provisions of this section, the Governmental Conduct Act may be enforced by the attorney general. Except as regards legislators or statewide elected officials, a district attorney in the county where a person resides or where a violation occurred may also enforce that act. Enforcement actions may include seeking civil injunctive or other appropriate orders.

**10-16-15. Repealed. (1993)**

**10-16-16. [Recompiled.]**

**10-16-17. Criminal penalties. (1993)**

Unless specified otherwise in the Governmental Conduct Act, any person who knowingly and willfully violates any of the provisions of that act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both. Nothing in the Governmental Conduct Act shall preclude criminal prosecution for bribery or other provisions of law set forth in the constitution of New Mexico or by statute.

**10-16-18. Enforcement; civil penalties. (1995)**

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Governmental Conduct Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Governmental Conduct Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

**Lobbyist Regulation Act**

**2-11-1. Short title.** (1993)

Chapter 2, Article 11 NMSA 1978 may be cited as the "Lobbyist Regulation Act".

**2-11-2. Definitions.** (1994)

As used in the Lobbyist Regulation Act:

A. "compensation" means any money, per diem, salary, fee or portion thereof or the equivalent in services rendered or in-kind contributions received or to be received in return for lobbying services performed or to be performed;

B. "expenditure" means a payment, transfer or distribution or obligation or promise to pay, transfer or distribute any money or other thing of value but does not include a lobbyist's own personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer;

C. "legislative committee" means a committee created by the legislature, including interim and standing committees of the legislature;

D. "lobbying" means attempting to influence:

(1) a decision related to any matter to be considered or being considered by the legislative branch of state government or any legislative committee or any legislative matter requiring action by the governor or awaiting action by the governor; or

(2) an official action;

E. "lobbyist" means any individual who is compensated for the specific purpose of lobbying; is designated by an interest group or organization to represent it on a substantial or regular basis for the purpose of lobbying; or in the course of his employment is engaged in lobbying on a substantial or regular basis. "Lobbyist" does not include:

(1) an individual who appears on his own behalf in connection with legislation or an official action;

(2) any elected or appointed officer of the state or its political subdivisions or an Indian tribe or pueblo acting in his official capacity;

(3) an employee of the state or its political subdivisions, specifically designated by an elected or appointed officer of the state or its political subdivision, who appears before a legislative committee or in a rulemaking proceeding only to explain the effect of legislation or a rule on his agency or political subdivision, provided the elected or appointed officer of the state or its political subdivision keeps for public inspection, and files with the secretary of state, such designation;

(4) any designated member of the staff of an elected state official, provided the elected state official keeps for public inspection and files with the secretary of state such designation;

(5) a member of the legislature, the staff of any member of the legislature or the staff of any legislative committee when addressing legislation;

(6) any witness called by a legislative committee or administrative agency to appear before that legislative committee or agency in connection with legislation or an official action;

(7) an individual who provides only oral or written public testimony in connection with a legislative committee or in a rulemaking proceeding and whose name and the interest on

behalf of which he testifies have been clearly and publicly identified; or

(8) a publisher, owner or employee of the print media, radio or television, while gathering or disseminating news or editorial comment to the general public in the ordinary course of business;

F. "lobbyist's employer" means the person whose interests are being represented and by whom a lobbyist is directly or indirectly retained, compensated or employed;

G. "official action" means the action or nonaction of a state official or state agency, board or commission acting in a rulemaking proceeding;

H. "person" means an individual, partnership, association, committee, federal, state or local governmental entity or agency, however constituted, public or private corporation or any other organization or group of persons who are voluntarily acting in concert;

I. "political contribution" means a gift, subscription, loan, advance or deposit of any money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for the purpose of influencing a primary, general or statewide election, including a constitutional or other question submitted to the voters, or for the purpose of paying a debt incurred in any such election;

J. "prescribed form" means a form prepared and prescribed by the secretary of state;

K. "rulemaking proceeding" means a formal process conducted by a state agency, board or commission for the purpose of adopting a rule, regulation, standard, policy or other requirement of general applicability and does not include adjudicatory proceedings; and

L. "state public officer" means a person holding a statewide office provided for in the constitution of New Mexico.

### **2-11-3. Registration statement to be filed; contents; modification to statement. (1993)**

A. In the month of January prior to each regular session or before any service covered by the Lobbyist Regulation Act commences, any individual who is initially employed or retained as a lobbyist shall register with the secretary of state by paying an annual filing fee of twenty-five dollars (\$25.00) for each of the lobbyist's employers and by filing a single registration statement under oath on a prescribed form showing:

(1) the lobbyist's full name, permanent business address and business address while lobbying; and

(2) the name and address of each of the lobbyist's employers.

B. No registration fee shall be required of individuals receiving only reimbursement of personal expenses and no other compensation or salary for lobbying. No expenditure statement required by Section 2-11-6 NMSA 1978 shall be required if the lobbyist anticipates making or incurring and makes or incurs no expenditures or political contributions under Section 2-11-6 NMSA 1978. The lobbyist shall indicate in his registration statement whether those circumstances apply to him.

C. For each employer listed in Paragraph (2) of Subsection A of this section, the lobbyist shall file the following information:

(1) a full disclosure of the sources of funds used for lobbying;

(2) a written statement from each of the lobbyist's employers authorizing him to lobby on the employer's behalf;

(3) a brief description of the matters in reference to which the service is to be rendered; and

(4) the name and address of the person, if other than the lobbyist or his employer, who will have custody of the accounts, bills, receipts, books, papers and documents required to be kept under the provisions of the Lobbyist Regulation Act.

D. For each succeeding year that an individual is employed or retained as a lobbyist by the same employer, and for whom all the information disclosed in the initial registration statement remains substantially the same, the lobbyist shall file a simple annual registration renewal in January and pay the twenty-five dollar (\$25.00) filing fee for each of the lobbyist's employers together with a short, abbreviated prescribed form for renewal.

E. Whenever there is a modification of the facts required to be set forth by this section or there is a termination of the lobbyist's employment as a lobbyist before the end of the calendar year, the lobbyist shall notify the secretary of state within one month of such occurrence and shall furnish full information concerning the modification or termination. If the lobbyist's employment terminates at the end of a calendar year, no separate termination report need be filed.

#### **2-11-4. Recompiled. (1993)**

#### **2-11-5. Other powers and duties of attorney general not limited or restricted. (1977)**

The powers and duties of the attorney general pursuant to the Lobbyist Regulation Act shall not be construed to limit or restrict the exercise of his power or the performance of his duties.

#### **2-11-6. Expenditure report to be filed; contents; reporting periods. (2005)**

A. Each lobbyist or lobbyist's employer who makes or incurs expenditures or political contributions for the benefit of or in opposition to a state legislator or candidate for the state legislature, a state public officer or candidate for state public office, a board or commission member or state employee who is involved in an official action affecting the lobbyist's employer or in support of or in opposition to a ballot issue or pending legislation or official action shall file an expenditure report with the secretary of state on a prescribed form or in an electronic format approved by the secretary of state. The expenditure report shall include a sworn statement that sets forth:

(1) the cumulative total of the expenditures made or incurred, separated into categories that identify the total separate amounts spent on:

- (a) meals and beverages;
- (b) other entertainment expenditures;
- (c) gifts; and
- (d) other expenditures;

(2) each political contribution made, identified by amount, date and name of the candidate or ballot issue supported or opposed; and

(3) the names, addresses and occupations of other contributors and the amounts of their separate political contributions if the lobbyist or lobbyist's employer delivers directly or indirectly separate contributions from those contributors in excess of five hundred dollars (\$500) in the aggregate for each election to a candidate, a campaign committee or anyone authorized by

a candidate to receive funds on the candidate's behalf.

B. If the expenditure report is filed electronically, the report shall be electronically authenticated by the lobbyist or the lobbyist's employer using an electronic signature as prescribed by the secretary of state in conformance with the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act. For the purposes of the Lobbyist Regulation Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the lobbyist or the lobbyist's employer that is required to file the report.

C. In identifying expenditures pursuant to the provisions of Paragraph (1) of Subsection A of this section, any individual expenditure that is more than the threshold level established in the Internal Revenue Code of 1986, as amended, that must be reported separately to claim a business expense deduction, as published by the secretary of state, shall be identified by amount, date, purpose, type of expenditure and name of the person who received or was benefited by the expenditure; provided, in the case of special events, including parties, dinners, athletic events, entertainment and other functions, to which all members of the legislature, to which all members of either house or any legislative committee or to which all members of a board or commission are invited, expenses need not be allocated to each individual who attended, but the date, location, name of the body invited and total expenses incurred shall be reported.

D. The reports required pursuant to the provisions of the Lobbyist Regulation Act shall be filed:

(1) by January 15 for all expenditures and political contributions made or incurred during the preceding year and not previously reported;

(2) within forty-eight hours for each separate expenditure made or incurred during a legislative session that was for five hundred dollars (\$500) or more; and

(3) by May 1 for all expenditures and political contributions made or incurred through April 25 of the current year and not previously reported.

E. A lobbyist's personal living expenses and the expenses incidental to establishing and maintaining an office in connection with lobbying activities or compensation paid to a lobbyist by a lobbyist's employer need not be reported.

F. A lobbyist or lobbyist's employer shall obtain and preserve all records, accounts, bills, receipts, books, papers and documents necessary to substantiate the financial statements required to be made under the Lobbyist Regulation Act for a period of two years from the date of filing of the report containing such items. When the lobbyist is required under the terms of the lobbyist's employment to turn over any such records to the lobbyist's employer, responsibility for the preservation of them as required by this section and the filing of reports required by this section shall rest with the employer. Such records shall be made available to the secretary of state or attorney general upon written request.

G. Any lobbyist's employer who also engages in lobbying shall comply with the provisions of the Lobbyist Regulation Act.

H. An organization of two or more persons, including an individual who holds himself out as an organization, that within one calendar year expends funds in excess of two thousand five hundred dollars (\$2,500) not otherwise reported under the Lobbyist Regulation Act to conduct an advertising campaign for the purpose of lobbying shall register with the secretary of

state within forty-eight hours after expending two thousand five hundred dollars (\$2,500). Such registration shall indicate the name of the organization and the names, addresses and occupations of any of its principals, organizers or officers and shall include the name of any lobbyist or lobbyist's employer who is a member of the organization. Within fifteen days after a legislative session, the organization shall report the contributions, pledges to contribute, expenditures and commitments to expend for the advertising campaign for the purpose of lobbying, including the names, addresses and occupations of the contributors, to the secretary of state on a prescribed form.

**2-11-7. Registration and expenditure statement; preservation as public record. (1993)**

Each registration and expenditure statement as required by the Lobbyist Regulation Act shall be preserved by the secretary of state for a period of two years from the date of filing as a public record, open to public inspection at any reasonable time. Unless an action or prosecution is pending that requires preserving the report, it may be destroyed two years after the date of filing.

**2-11-8. Contingent fees prohibited in lobbying the legislative branch of state government. (1977)**

No person shall accept employment as a lobbyist and no lobbyist's employer shall employ a lobbyist for compensation contingent in whole or in part upon the outcome of the lobbying activities before the legislative branch of state government or the approval or veto of any legislation by the governor.

**2-11-8.1. Restrictions on campaign activities and contributions. (1995)**

A. No lobbyist may serve as a campaign chairman, treasurer or fundraising chairman for a candidate for the legislature or a statewide office.

B. It is unlawful during the prohibited period for any lobbyist or lobbyist's employer to contribute to or act as an agent or intermediary for political contributions to or arrange for the making of political contributions to the campaign funds of any statewide elected official or legislator or any candidate for those offices.

C. For purposes of this section, "prohibited period" is that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on:

- (1) the day the session ends for:
  - (a) any statewide elected official or candidate for statewide office except the governor; and
  - (b) a legislator or any candidate for the legislature; and
- (2) the twentieth day following the adjournment of the regular or special session for the governor or candidate for governor.

**2-11-8.2. Compliance with act; enforcement of act; binding arbitration; civil penalties. (1997)**

A. The secretary of state shall advise and seek to educate all persons required to perform duties pursuant to the Lobbyist Regulation Act of those duties. This includes advising all

registered lobbyists at least annually of the Lobbyist Regulation Act's deadlines for submitting required reports. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested to do so in writing, on matters concerning the Lobbyist Regulation Act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may conduct thorough examinations of reports and initiate investigations to determine whether the Lobbyist Regulation Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for issuing advisory opinions, processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Lobbyist Regulation Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the person that he has ten working days to provide a written explanation, under penalty of perjury, stating any reason the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists, the secretary of state may by a written notice of final action partially or fully waive any fine imposed. A written notice of final action shall be sent by certified mail.

D. If the person charged disputes the secretary of state's determination, including an advisory opinion, the person charged may request binding arbitration within ten working days of the date of the final action. Any penalty imposed shall be due and payable within ten working days of the notice of final action. No additional penalty shall accrue pending issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Lobbyist Regulation Act, Campaign Reporting Act or Financial Disclosure Act may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator may impose any penalty and take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. Any person who files a report after the deadline imposed by the Lobbyist Regulation Act, or any person who files a false or incomplete report, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the report until the complete report is filed, up to a maximum of five

thousand dollars (\$5,000).

H. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

**2-11-9. Penalties. (1993)**

In addition to any other penalties that may be assessed, any person who knowingly and willfully violates any of the provisions of the Lobbyist Regulation Act shall be punished by a fine of up to five thousand dollars (\$5,000) and may have his lobbyist registration revoked or his lobbying activities enjoined for up to three years.

**Campaign Reporting Act**

**1-19-25. Short title. (1979)**

Sections 1-19-25 through 1-19-36 NMSA 1978 may be cited as the "Campaign Reporting Act".

**1-19-26. Definitions. (2003)**

As used in the Campaign Reporting Act:

A. "advertising campaign" means an advertisement or series of advertisements used for a political purpose and disseminated to the public either in print, by radio or television broadcast or by any other electronic means, including telephonic communications, and may include direct or bulk mailings of printed materials;

B. "anonymous contribution" means a contribution the contributor of which is unknown to the candidate or his agent or the political committee or its agent who accepts the contribution;

C. "bank account" means an account in a financial institution located in New Mexico;

D. "campaign committee" means two or more persons authorized by a candidate to raise, collect or expend contributions on the candidate's behalf for the purpose of electing him to office;

E. "candidate" means an individual who seeks or considers an office in an election covered by the Campaign Reporting Act, including a public official, who either has filed a declaration of candidacy or nominating petition or:

(1) for a non-statewide office, has received contributions or made expenditures of one thousand dollars (\$1,000) or more or authorized another person or campaign committee to receive contributions or make expenditures of one thousand dollars (\$1,000) or more for the purpose of seeking election to the office; or

(2) for a statewide office, has received contributions or made expenditures of two thousand five hundred dollars (\$2,500) or more or authorized another person or campaign committee to receive contributions or make expenditures of two thousand five hundred dollars (\$2,500) or more for the purpose of seeking election to the office or for candidacy exploration purposes in the years prior to the year of the election;

F. "contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made or received for a political purpose, including payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

G. "deliver" or "delivery" means to deliver by certified or registered mail, telecopier, electronic transmission or facsimile or by personal service;

H. "election" means any primary, general or statewide special election in New Mexico and includes county and judicial retention elections but excludes municipal, school board and special district elections;

I. "election year" means an even-numbered year in which an election covered by the Campaign Reporting Act is held;

J. "expenditure" means a payment, transfer or distribution or obligation or promise to

pay, transfer or distribute any money or other thing of value for a political purpose, including payment of a debt incurred in an election campaign or pre-primary convention, but does not include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee;

K. "person" means an individual or entity;

L. "political committee" means two or more persons, other than members of a candidate's immediate family or campaign committee or a husband and wife who make a contribution out of a joint account, who are selected, appointed, chosen, associated, organized or operated primarily for a political purpose; and political committee includes:

(1) political action committees or similar organizations composed of employees or members of any corporation, labor organization, trade or professional association or any other similar group that raises, collects, expends or contributes money or any other thing of value for a political purpose;

(2) a single individual who by his actions represents that he is a political committee; and

(3) a person or an organization of two or more persons that within one calendar year expends funds in excess of five hundred dollars (\$500) to conduct an advertising campaign for a political purpose;

M. "political purpose" means influencing or attempting to influence an election or pre-primary convention, including a constitutional amendment or other question submitted to the voters;

N. "prescribed form" means a form or electronic format prepared and prescribed by the secretary of state;

O. "proper filing officer" means either the secretary of state or the county clerk as provided in Section 1-19-27 NMSA 1978;

P. "public official" means a person elected to an office in an election covered by the Campaign Reporting Act or a person appointed to an office that is subject to an election covered by that act;

Q. "reporting individual" means every public official, candidate or treasurer of a campaign committee and every treasurer of a political committee; and

R. "statement of exception" or "statement" means the prescribed form subscribed and sworn to by a candidate to indicate that the candidate does not intend to raise or expend the minimum amount required for the filing of a report of expenditures and contributions as provided in Section 1-19-33 NMSA 1978.

#### **1-19-26.1. Political committees; registration; disclosures. (2002)**

A. It is unlawful for any political committee that receives, contributes or expends in excess of five hundred dollars (\$500) in any calendar year to continue to receive or make any contribution or expenditure for a political purpose unless that political committee appoints and maintains a treasurer and registers with the secretary of state.

B. A political committee shall register with the secretary of state within ten days of receiving, contributing or expending in excess of five hundred dollars (\$500) by paying a filing fee of fifty dollars (\$50.00) and filing a statement of organization under oath on a prescribed

form showing:

- (1) the full name of the political committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization, and its address;
- (2) a statement of the purpose for which the political committee was organized;
- (3) the name, address and relationship of any connected or associated organization or entity;
- (4) the names and addresses of the officers of the committee; and
- (5) an identification of the bank used by the committee for all expenditures or contributions made or received.

C. The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission if the political committee reports on federal reporting forms filed with the federal election commission all expenditures for and contributions made to reporting individuals in New Mexico and files with the secretary of state, according to the schedule required for the filing of forms with the federal election commission, a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico.

#### **1-19-26.2. Rules and regulations. (1997)**

The secretary of state may adopt and promulgate rules and regulations to implement the provisions of the Campaign Reporting Act. In adopting and promulgating these rules and regulations, the secretary of state shall comply with the provisions of the Administrative Procedures Act. In addition to any other notification required pursuant to the provisions of Paragraph (2) of Subsection A of Section 12-8-4 NMSA 1978, the secretary of state shall notify all qualified political parties in the state and the New Mexico legislative council prior to adopting, amending or repealing any rule or regulation.

#### **1-19-26.3. Campaign committee and political committee expenditures; disclosure; telephone calls; records. (2002)**

A. A campaign committee or political committee that is required to register pursuant to the Campaign Reporting Act shall not expend campaign or political committee funds to directly or indirectly pay for a telephone call without disclosing to the recipient the name of the organization that authorized or paid for the call if the call:

- (1) is one of five hundred or more calls that are similar in nature made during an election cycle by an individual or individuals, or by electronic means; and
- (2) advocates support for, or opposition to, a candidate for public office or ballot measure.

B. The campaign committee or political committee that pays for a call referred to in Subsection A of this section shall be disclosed in the call unless the organization that authorized the call and in whose name it is placed has filing obligations pursuant to the Campaign Reporting Act and the name announced in the call is either:

- (1) the full name by which the organization or individual is identified in any statement or report required to be filed pursuant to the Campaign Reporting Act; or

(2) the name by which the organization or individual is commonly known.

C. A campaign committee or political committee that pays directly or indirectly for telephone calls as described in Subsection A of this section shall maintain a record of the script of the calls for at least ninety days following election day. If any of the calls qualifying pursuant to Subsection A of this section are recorded messages, a copy of the recording shall also be maintained for that period.

D. A campaign committee or political committee may not contract with a phone bank vendor that does not disclose the information required to be disclosed by Subsection A or B of this section.

**1-19-27. Reports required; proper filing officer.** (Effective until January 1, 2006.) (1995)

A. Except for those candidates who file a statement of exception in an election year pursuant to Section 1-19-33 NMSA 1978, all reporting individuals shall annually file with the proper filing officer a report of expenditures and contributions on a prescribed form. The report shall be filed on the second Monday in May pursuant to the provisions of Subsection A of Section 1-19-29 NMSA 1978.

B. The proper filing officer for filing reports of expenditures and contributions or statements of exception is the secretary of state for a public official in or a candidate seeking any of the following offices:

- (1) a statewide elective office;
- (2) an elected judicial office in the judicial department, except a magistrate; and
- (3) an office representing a district composed of more than one county, except that legislators representing or candidates seeking to represent multicounty districts may file reports of expenditures and contributions or statements of exception with either the secretary of state or with the county clerk in the county in which they reside.

C. The proper filing officer for filing reports of expenditures and contributions or statements of exception is the county clerk for a public official in or a candidate seeking any of the following offices:

- (1) an elective county office;
- (2) a magistrate; and
- (3) a state legislative office elected from a district located wholly within one county.

D. The proper filing officer for filing reports of expenditures and contributions by a political committee is the secretary of state.

**1-19-27. Reports required; proper filing officer.** (Effective January 1, 2006.) (2003)

A. Except for those candidates who file a statement of exception in an election year pursuant to Section 1-19-33 NMSA 1978, all reporting individuals shall annually file with the proper filing officer a report of expenditures and contributions on a prescribed form. The report shall be filed on the second Monday in May pursuant to the provisions of Subsection A of Section 1-19-29 NMSA 1978.

B. The proper filing officer for filing reports of expenditures and contributions by a political committee is the secretary of state.

C. The proper filing officer for filing reports of expenditures and contributions or

statements of exception is the secretary of state for all public officials.

D. The secretary of state shall develop or contract for services to develop an electronic reporting system for receiving and for public inspection of reports of expenditures and contributions and statements of exception to the Campaign Reporting Act. The electronic reporting system shall:

- (1) enable a person to file reports on-line by filling out forms on the secretary of state's web site; and
- (2) provide for encrypted transmissions.

**1-19-27.1, 1-19-27.2. Repealed. (1993)**

**1-19-28. Furnishing report forms; political committees; candidates. (1995)**

A. The secretary of state annually shall furnish to all reporting individuals the prescribed forms for the reporting of expenditures and contributions, supplemental reports and a statement of exception and the specific dates the reports and statement are due.

B. In addition to the provisions of Subsection A of this section, at the time of filing a declaration of candidacy or a nominating petition, the proper filing officer shall give the candidate the prescribed reporting forms and the schedule of specific dates for filing the required reports or a statement of exception. The prescribed forms shall also be made available to all reporting individuals at the office of the secretary of state and in each county at the office of the county clerk.

**1-19-29. Time and place of filing reports. (2007)**

A. Annually, except as otherwise provided in this section, all reporting individuals shall file with the proper filing officer by 5:00 p.m. on the second Monday in May a report of all expenditures made and contributions received on or before the first Monday in May and not previously reported. The report shall be filed annually until the reporting individual's bank account has been closed and the other provisions specified in Subsection F of this section have been satisfied.

B. In an election year, in addition to the May report provided for in Subsection A of this section, all reporting individuals, except for persons who file a statement of exception pursuant to Section 1-19-33 NMSA 1978, candidates who file a statement of no activity and public officials who are not candidates in an election that year, shall file reports of all expenditures made and contributions received according to the following schedule:

- (1) by 5:00 p.m. on the second Monday in October, a report of all expenditures made and contributions received on or before the first Monday in October and not previously reported;
- (2) by 5:00 p.m. on the Thursday before a primary, general or statewide special election, a report of all expenditures made and contributions received by 5:00 p.m. on the Tuesday before the election. Any contribution or pledge to contribute that is received after 5:00 p.m. on the Tuesday before the election and that is for five hundred dollars (\$500) or more in a legislative or non-statewide judicial election, or two thousand five hundred dollars (\$2,500) or more in a statewide election, shall be reported to the proper filing officer either in a supplemental report on a prescribed form within twenty-four hours of receipt or in the report to be filed by 5:00

p.m. on the Thursday before a primary, general or statewide special election, except that any such contribution or pledge to contribute that is received after 5:00 p.m. on the Friday before the election may be reported by 12:00 noon on the Monday before the election; and

(3) by 5:00 p.m. on the thirtieth day after a primary, general or statewide special election, a report of all expenditures made and contributions received on or before the twenty-fifth day after the election and not previously reported.

C. If a candidate has not received any contributions and has not made any expenditures since the candidate's last report was filed with the proper filing officer, the candidate shall only be required to file a statement of no activity, which shall not be required to be notarized, in lieu of a full report when that report would otherwise be due and shall not be required to file a full report until the next required filing date occurring after an expenditure is made or a contribution is received.

D. Notwithstanding the other provisions of this section, the report due on the thirtieth day after an election need be the only report filed after the annual May report if the candidate is not opposed in the election and if the report includes all expenditures made and contributions received for that election and not previously reported.

E. A report of expenditures and contributions filed after a deadline set forth in this section shall not be deemed to have been timely filed.

F. Except for candidates who file a statement of no activity, each reporting individual shall file a report of expenditures and contributions annually pursuant to the filing schedule set forth in this section, regardless of whether any expenditures were made or contributions were received during the reporting period. Reports shall be required until the reporting individual delivers a report to the proper filing officer stating that:

(1) there are no outstanding campaign debts;

(2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and

(3) the bank account has been closed.

G. Each treasurer of a political committee shall file a report of expenditures and contributions annually pursuant to the filing schedule set forth in this section until the treasurer files a report that affirms that the committee has dissolved or no longer exists and that its bank account has been closed.

H. A reporting individual who is a candidate within the meaning of the Campaign Reporting Act because of the amount of contributions the candidate receives or expenditures the candidate makes and who does not ultimately file a declaration of candidacy or a nominating petition with the proper filing officer and does not file a statement of no activity shall nevertheless file a report, not later than the second Monday in May for a primary election or the second Monday in October for a general election, of all contributions received and expenditures made on or before the first Monday in May for a primary election or the first Monday in October for a general election and not previously reported.

I. Reports required by this section shall be subscribed and sworn to by the candidate or the treasurer of the political committee. A report filed electronically shall be electronically authenticated by the candidate or the treasurer of the political committee using an electronic signature in conformance with the Electronic Authentication of Documents Act and the Uniform

Electronic Transactions Act. For the purposes of the Campaign Reporting Act, a report that is electronically authenticated in accordance with the provisions of this subsection shall be deemed to have been subscribed and sworn to by the candidate or the treasurer of the political committee who was required to file the report.

J. Reports required by this section shall be filed electronically by all reporting individuals.

K. Reporting individuals may apply to the secretary of state for exemption from electronic filing in case of hardship, which shall be defined by the secretary of state.

**1-19-29.1. Campaign funds; limitation on use. (1995)**

A. It is unlawful for any candidate or his agent to make an expenditure of contributions received, except for the following purposes or as otherwise provided in this section:

- (1) expenditures of the campaign;
- (2) expenditures of legislators that are reasonably related to performing the duties of the office held, including mail, telephone and travel expenditures to serve constituents, but excluding personal and legislative session living expenses;
- (3) donations to the state general fund;
- (4) donations to an organization to which a federal income tax deduction would be permitted under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended;
- (5) expenditures to eliminate the campaign debt of the candidate for the office sought or expenditures incurred by the candidate when seeking election to another public office covered by the Campaign Reporting Act;
- (6) donations to a political party or to another candidate seeking election to public office; or
- (7) disbursements to return unused funds pro rata to the contributors if no campaign debt exists.

B. A judge subject to a nonpartisan retention election or a candidate for judicial office shall solicit or accept campaign funds and return unused funds in accordance with the provisions of the Code of Judicial Conduct.

C. No contributions solicited for or received in a federal election campaign may be used in a state election campaign.

**1-19-30. Repealed. (1993)**

**1-19-31. Contents of report. (2007)**

A. Each required report of expenditures and contributions shall be typed or printed legibly, or on a computer disc or format approved by the secretary of state, and shall include:

- (1) the name and address of the person or entity to whom an expenditure was made or from whom a contribution was received, except as provided for anonymous contributions or contributions received from special events as provided in Section 1-19-34 NMSA 1978; provided that for contributors, the name of the entity or the first and last names of any individual shall be the full name of the entity or individual, and initials only shall not constitute a full name unless

that is the complete legal name;

(2) the occupation or type of business of any person or entity making contributions of two hundred fifty dollars (\$250) or more in the aggregate per election;

(3) the amount of the expenditure or contribution or value thereof;

(4) the purpose of the expenditure; and

(5) the date the expenditure was made or the contribution was received.

B. Each report shall contain an opening and closing cash balance for the bank account maintained by the reporting individual during the reporting period and the name of the financial institution.

C. Each report shall specify the amount of each unpaid debt and the identity of the person to whom the debt is owed.

### **1-19-32. Inspection of public records. (2003)**

A. Each of the following documents is a public record open to public inspection during regular office hours in the office in which the document was filed or from which the document was issued:

(1) a statement of exception;

(2) a report of expenditures and contributions;

(3) an advisory opinion issued by the secretary of state;

(4) a document specified as a public record in the Campaign Reporting Act; and

(5) an arbitration decision issued by an arbitration panel and filed with the secretary of state.

B. Each public record described in Subsection A of this section shall be retained by the state for five years and may be destroyed five years after the date of filing unless a legal action or prosecution is pending that requires the preservation of the public record.

C. The secretary of state shall provide for electronic access to reports of expenditures and contributions and statements of exception submitted electronically by reporting individuals. Electronic access shall include access via the internet and shall be in an easily searchable format.

### **1-19-32.1. Reports examination; forwarding of reports. (1995)**

A. The secretary of state shall conduct a thorough examination of at least ten percent of all reports filed during a year by reporting individuals, selected at random at least forty days after the general election and ten days after the May reports are filed in a nonelection year, to determine compliance with the provisions of the Campaign Reporting Act. The examination may include an investigation of any discrepancies, including a cross-reference to reports filed by any other reporting individual. A reporting individual shall be notified in writing if a discrepancy is found in the report filed and shall be permitted to file a written explanation for the discrepancy within ten working days of the date of the notice. The notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply to examinations conducted under this section.

B. After the date stated in the notice of final action for submission of a written explanation, the secretary of state shall prepare an annual report of any unresolved discrepancies found after examination of the random sample provided for in Subsection A of this section. A

copy of this report shall be transmitted to the attorney general for enforcement pursuant to the provisions of Section 1-19-36 NMSA 1978. This report is a public record open to public inspection and subject to the retention and destruction provisions set forth in Section 1-19-32 NMSA 1978.

C. A county clerk shall deliver to the secretary of state, within forty-eight hours of the county clerk's receipt, each report of expenditures and contributions or statement of exception filed with the county clerk's office. Within forty-eight hours of receipt of a report of expenditures and contributions or statement of exception filed by a legislative candidate for a multicounty district, the secretary of state shall deliver to each county clerk in the multicounty legislative district a copy of the report or statement filed.

**1-19-33. Exclusion of certain candidates from reporting; statement of exception. (1995)**

A. In a year in which a primary, general or special statewide election is held, a person who seeks or considers a public office covered by the Campaign Reporting Act and who anticipates receiving or expending for the election less than one thousand dollars (\$1,000) for a non-statewide office, or two thousand five hundred dollars (\$2,500) for a statewide office, may file, in lieu of filing a report of expenditures and contributions, a statement of exception to that effect before the election on a prescribed form and under penalty of perjury. The statement of exception shall be filed by 5:00 p.m. on the second Monday in May for a primary or special statewide election or by 5:00 p.m. on the second Monday in October for a general or special statewide election. The statement shall be filed with the proper filing officer.

B. Upon the filing of the statement of exception, the candidate shall not be required to file a report of expenditures and contributions except as provided in Subsection D of this section.

C. A statement of exception that is not timely filed or that includes false or incomplete information shall be subject to the notice, penalty and arbitration provisions set forth in Section 1-19-34.4 NMSA 1978.

D. If at any time after filing a statement of exception a candidate receives or expends in an election more than the threshold amounts provided in Subsection A of this section, the candidate shall file reports of expenditures and contributions according to the reporting schedule provided in Section 1-19-29 NMSA 1978.

**1-19-34. Candidates; political committees; treasurer; bank account; anonymous contributions; contributions from special events. (1995)**

A. It is unlawful for the members of any political committee or any candidate to make any expenditure or solicit or accept any contribution for a political purpose unless:

(1) a treasurer has been appointed and is constantly maintained; provided, however, when a duly appointed treasurer is unable for any reason to continue as treasurer, the candidate or political committee shall appoint a successor; and provided further that a candidate may serve as his own treasurer;

(2) all disbursements of money and receipts of contributions are authorized by and through the candidate or treasurer;

(3) a separate bank account has been established and all receipts of money contributions and all expenditures of money are deposited in and disbursed from the one bank

account maintained by the treasurer in the name of the candidate or political committee; provided that nothing in this section shall prohibit investments from the bank account to earn interest as long as the investments and earnings are fully reported. All disbursements except for disbursements made from a petty cash fund of one hundred dollars (\$100) or less shall be by check made payable to the person or entity receiving the disbursement and not to "cash" or "bearer"; and

(4) the treasurer upon disbursing or receiving money or other things of value immediately enters and thereafter keeps a proper record preserved by him, including a full, true and itemized statement and account of each sum disbursed or received, the date of such disbursement or receipt, to whom disbursed or from whom received and the object or purpose for which it was disbursed or received.

B. No anonymous contributions may be accepted in excess of one hundred dollars (\$100). The aggregate amount of anonymous contributions received by a reporting individual during a primary or general election or a statewide special election shall not exceed two thousand dollars (\$2,000) for statewide races and five hundred dollars (\$500) for all other races.

C. Cash contributions received at special events that are unidentifiable as to specific contributor but identifiable as to the special event are not subject to the anonymous contribution limits provided for in this section so long as no single special event raises, after expenses, more than one thousand dollars (\$1,000) in such cash contributions. For those contributions, due diligence and best efforts shall be made to disclose on a special prescribed form the sponsor, date, place, total amount received, expenses incurred, estimated number of persons in attendance and other identifiable factors that describe the special event. For purposes of this subsection, "special event" includes an event such as a barbecue or similar fundraiser where tickets costing fifteen dollars (\$15.00) or less are sold or an event such as a coffee, tea or similar reception.

D. Any contributions received pursuant to this section in excess of the limits established in Subsections B and C of this section shall be donated to the state general fund or an organization to which a federal income tax deduction would be available under Subparagraph (A) of Paragraph (1) of Subsection (b) of Section 170 of the Internal Revenue Code of 1986, as amended.

#### **1-19-34.1. Legislative session fundraising prohibition. (1995)**

A. It is unlawful during the prohibited period for a state legislator or a candidate for state legislator, or any agent on behalf of either, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on adjournment of the regular or special session.

B. It is unlawful during the prohibited period for the governor, or any agent on his behalf, to knowingly solicit a contribution for a political purpose. For purposes of this subsection, "prohibited period" means that period beginning January 1 prior to any regular session of the legislature or, in the case of a special session, after the proclamation has been issued, and ending on the twentieth day following the adjournment of the regular or special session.

#### **1-19-34.2. Regulated industry solicitations prohibited. (1995)**

It is unlawful for an elected state official, public officer or employee who works for a regulatory office or a candidate who seeks election to a regulatory office or anyone authorized by a candidate to solicit funds on his behalf to knowingly solicit a contribution from an entity or its officers or employees or a person that is directly regulated by the office. For purposes of this section, an entity or person is directly regulated by an office when the entity's or person's charges for services offered to the public are set or directly subject to approval by the regulatory office or when a license to do business in the state is determined by the regulatory office.

**1-19-34.3. Contributions in one name given for another prohibited. (1995)**

It is unlawful for a person or political committee to make, or a candidate or his agent to accept, a contribution that is reported as coming from one person or entity when the candidate or his agent knows that the contribution is actually from another person or entity that directed that the contribution not be publicly reported.

**1-19-34.4. Education and voluntary compliance; investigations; binding arbitration; referrals for enforcement. (1997)**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Campaign Reporting Act of those duties. This includes advising all known reporting individuals at least annually of that act's deadlines for submitting required reports and statements of exception. The secretary of state, in consultation with the attorney general, shall issue advisory opinions, when requested in writing to do so, on matters concerning that act. All prescribed forms prepared shall be clear and easy to complete.

B. The secretary of state may initiate investigations to determine whether any provision of the Campaign Reporting Act has been violated. Additionally, any person who believes that a provision of that act has been violated may file a written complaint with the secretary of state any time prior to ninety days after an election, except that no complaints from the public may be filed within eight days prior to an election. The secretary of state shall adopt procedures for issuing advisory opinions and processing complaints and notifications of violations.

C. The secretary of state shall at all times seek to ensure voluntary compliance with the provisions of the Campaign Reporting Act. If the secretary of state determines that a provision of that act for which a penalty may be imposed has been violated, the secretary of state shall by written notice set forth the violation and the fine imposed and inform the reporting individual that he has ten working days from the date of the letter to correct the matter and to provide a written explanation, under penalty of perjury, stating any reason why the violation occurred. If a timely explanation is filed and the secretary of state determines that good cause exists to waive the fine imposed, the secretary of state may by a written notice of final action partially or fully waive any fine imposed for any late, incomplete or false report or statement of exception. A written notice of final action shall be sent by certified mail.

D. Upon receipt of the notice of final action, the person against whom the penalty has been imposed may protest the secretary of state's determination, including an advisory opinion, by submitting on a prescribed form a written request for binding arbitration to the secretary of state within ten working days of the date of the notice of final action. Any fine imposed shall be due and payable within ten working days of the date of notice of final action. No additional fine

shall accrue pending the issuance of the arbitration decision. Fines paid pursuant to a notice of final action that are subsequently reduced or dismissed shall be reimbursed with interest within ten working days after the filing of the arbitration decision with the secretary of state. Interest on the reduced or dismissed portion of the fine shall be the same as the rate of interest earned by the secretary of state's escrow account to be established by the department of finance and administration.

E. An arbitration hearing shall be conducted by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. Neither the secretary of state nor a person subject to the Campaign Reporting Act, Lobbyist Regulation Act or Financial Disclosure Act may serve as an arbitrator. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

F. The arbitrator shall conduct the hearing within thirty days of the request for arbitration. The arbitrator may impose any penalty the secretary of state is authorized to impose. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued and filed with the secretary of state within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator shall be subject to liability for actions taken pursuant to this section.

G. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or for criminal enforcement.

#### **1-19-34.5. Presumptions; civil action. (1995)**

A. For purposes of a civil action, it shall be presumed that a public official or a candidate for public office subject to the Campaign Reporting Act has authorized and approved each solicitation for campaign contributions made by his campaign committee or a person authorized by the candidate to solicit campaign contributions on his behalf.

B. For purposes of a civil action, it shall be presumed that a candidate who seeks election to a regulatory office, as described in Section 1-19-34.2 NMSA 1978, has advised his campaign committee and all persons authorized by the candidate to solicit campaign contributions on his behalf that it is unlawful to solicit contributions from an entity or its officers or employees or a person that is directly regulated by the office the candidate seeks.

#### **1-19-34.6. Civil penalties. (1995)**

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Campaign Reporting Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or district attorney may institute a civil action in district court for any violation of the Campaign Reporting Act or to prevent a violation of that act that involves an unlawful solicitation or the making or acceptance of an unlawful contribution. An action for relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including a civil penalty of two hundred fifty dollars (\$250) for each violation

not to exceed five thousand dollars (\$5,000), and forfeiture of any contribution received as a result of an unlawful solicitation or unlawful contribution. Each unlawful solicitation and each unlawful contribution made or accepted shall be deemed a separate violation of the Campaign Reporting Act.

C. The attorney general or district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Campaign Reporting Act other than that specified in Subsection B of this section. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of fifty dollars (\$50.00) for each violation not to exceed five thousand dollars (\$5,000).

**1-19-35. Reports and statements; late filing penalty; failure to file. (1997)**

A. Except for the report required to be filed and delivered the Thursday prior to the election and any supplemental report, as required in Paragraph (2) of Subsection B of Section 1-19-29 NMSA 1978, that is due prior to the election, and subject to the provisions of Section 1-19-34.4 NMSA 1978, if a statement of exception or a report of expenditures and contributions contains false or incomplete information or is filed after any deadline imposed by the Campaign Reporting Act, the responsible reporting individual or political committee, in addition to any other penalties or remedies prescribed by the Election Code, shall be liable for and shall pay to the secretary of state fifty dollars (\$50.00) per day for each regular working day after the time required by the Campaign Reporting Act for the filing of statements of exception or reports of expenditures and contributions until the complete or true statement or report is filed, up to a maximum of five thousand dollars (\$5,000).

B. If any reporting individual files a false, incomplete or late report of expenditures and contributions due on the Thursday prior to the election, the reporting individual or political committee shall be liable and pay to the secretary of state five hundred dollars (\$500) for the first working day and fifty dollars (\$50.00) for each subsequent working day after the time required for the filing of the report until the true and complete report is filed, up to a maximum of five thousand dollars (\$5,000).

C. If a reporting individual fails to file or files a late supplemental report of expenditures and contributions as required in Paragraph (2) of Subsection B of Section 1-19-29 NMSA 1978, the reporting individual or political committee shall be liable for and pay to the secretary of state a penalty equal to the amount of each contribution received or pledged after the Tuesday before the election that was not timely filed.

D. All sums collected for the penalty shall be deposited in the state general fund. A report or statement of exception shall be deemed timely filed only if it is received by the proper filing officer by the date and time prescribed by law.

E. Any candidate who fails or refuses to file a report of expenditures and contributions or statement of exception or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not, in addition to any other penalties provided by law:

- (1) have his name printed upon the ballot if the violation occurs before and through the final date for the withdrawal of candidates; or
- (2) be issued a certificate of nomination or election, if the violation occurs after the

final date for withdrawal of candidates or after the election, until the candidate satisfies all reporting requirements of the Campaign Reporting Act and pays all penalties owed.

F. Any candidate who loses an election and who failed or refused to file a report of expenditures and contributions or a statement of exception or to pay a penalty imposed by the secretary of state as required by the Campaign Reporting Act shall not be, in addition to any other penalties provided by law, permitted to file a declaration of candidacy or nominating petition for any future election until the candidate satisfies all reporting requirements of that act and pays all penalties owed.

**1-19-36. Penalties; criminal enforcement. (1995)**

A. Any person who knowingly and willfully violates any provision of the Campaign Reporting Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

B. The Campaign Reporting Act may be enforced by the attorney general or the district attorney in the county where the candidate resides, where a political committee has its principal place of business or where the violation occurred.

**Financial Disclosure Act**

**10-16A-1. Short title.** (1993)

This act may be cited as the "Financial Disclosure Act".

**10-16A-2. Definitions.** (1993)

As used in the Financial Disclosure Act:

A. "business" means a corporation, partnership, sole proprietorship, firm, organization or individual carrying on a business;

B. "employment" means rendering of services for compensation in the form of salary as an employee;

C. "financial interest" means an interest held by an individual or his spouse that is:

(1) an ownership interest in business; or

(2) any employment or prospective employment for which negotiations have already begun;

D. "official act" means an official decision, recommendation, approval, disapproval or other action that involves the use of discretionary authority;

E. "person" means an individual or entity; and

F. "public officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators and judges.

**10-16A-3. Required disclosures for certain candidates and public officers and employees; condition for placement on ballot or appointment.** (1997)

A. At the time of filing a declaration of candidacy or nominating petition, a candidate for legislative or statewide office shall file with the proper filing officer, as defined in Section 1-8-25 NMSA 1978, a financial disclosure statement on a prescribed form. In addition, each year thereafter during the month of January, a legislator and a person holding a statewide office shall file with the proper filing officer a financial disclosure statement. If the proper filing officer is not the secretary of state, the proper filing officer shall forward a copy of the financial disclosure statement to the secretary of state within seventy-two hours.

B. A state agency head or official whose appointment to a board or commission is subject to confirmation by the senate shall file with the secretary of state a financial disclosure statement within thirty days of appointment and during the month of January every year thereafter that he holds public office.

C. The financial disclosure statement shall include for any person identified in Subsection A or B of this section and the person's spouse the following information for the prior calendar year:

(1) the full name, mailing address and residence address of each person covered in the disclosure statement, except the address of the spouse need not be disclosed; the name and address of the person's and spouse's employer and the title or position held; and a brief description of the nature of the business or occupation;

(2) all sources of gross income of more than five thousand dollars (\$5,000) to each person covered in the disclosure statement, identified by general category descriptions that

disclose the nature of the income source, in the following broad categories: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other", with direction that the income source be similarly described. In describing a law practice, consulting operation or similar business of the person or spouse, the major areas of specialization or income sources shall be described, and if the spouse or a person in the reporting person's or spouse's law firm, consulting operation or similar business is or was during the reporting calendar year or the prior calendar year a registered lobbyist under the Lobbyist Regulation Act, the names and addresses of all clients represented for lobbying purposes during those two years shall be disclosed;

(3) a general description of the type of real estate owned in New Mexico, other than a personal residence, and the county where it is located;

(4) all other New Mexico business interests not otherwise listed of ten thousand dollars (\$10,000) or more in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(5) all memberships held by the reporting individual and his spouse on boards of for-profit businesses in New Mexico;

(6) all New Mexico professional licenses held;

(7) each state agency that was sold goods or services in excess of five thousand dollars (\$5,000) during the prior calendar year by a person covered in the disclosure statement;

(8) each state agency, other than a court, before which a person covered in the disclosure statement represented or assisted clients in the course of his employment during the prior calendar year; and

(9) a general category that allows the person filing the disclosure statement to provide whatever other financial interest or additional information the person believes should be noted to describe potential areas of interest that should be disclosed.

D. A complete financial disclosure statement shall be filed every year. The secretary of state shall mail each elected official required to file a financial disclosure statement a copy of any statement the person filed the previous year.

E. The financial disclosure statements filed pursuant to this section are public records open to public inspection during regular office hours and shall be retained by the state for five years from the date of filing.

F. A person who files a financial disclosure statement may file an amended statement at any time to reflect significant changed circumstances that occurred since the last statement was filed.

G. Any candidate for a legislative or statewide office who fails or refuses to file a financial disclosure statement required by this section before the final date for the withdrawal of candidates provided for in the Election Code shall not have his name printed on the election ballot.

H. For a state agency head or an official whose appointment to a board or commission is subject to confirmation by the senate, the filing of the financial disclosure statement required by

this section is a condition of entering upon and continuing in state employment or holding an appointed position.

**10-16A-4. Disclosures by certain public officers or employees of state agencies; condition of employment. (1993)**

A. Every employee who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the state agency by which he is employed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before entering state employment and during the month of January every year thereafter.

B. Every public officer who is not otherwise required to file a financial disclosure statement under the Financial Disclosure Act and who has a financial interest that he believes or has reason to believe may be affected by his official act or actions of the board or commission to which he is appointed shall disclose the nature and extent of that interest. The disclosures shall be made in writing to the secretary of state before taking office and during the month of January every year thereafter.

C. The information on the disclosures shall be made available by the secretary of state for inspection to any citizen of this state.

D. The filing of disclosures pursuant to this section is a condition of entering upon and continuing in state employment or, for persons subject to Subsection B of this section, of holding public office.

**10-16A-5. Education and voluntary compliance. (1993)**

A. The secretary of state shall advise and seek to educate all persons required to perform duties under the Financial Disclosure Act of those duties. This includes providing timely advance notice of the required financial disclosure statement and preparing forms that are clear and easy to complete.

B. The secretary of state shall seek first to ensure voluntary compliance with the provisions of the Financial Disclosure Act. A person who violates that act unintentionally or for good cause shall be given ten days' notice to correct the matter before fines are imposed. Referrals for civil enforcement of the Financial Disclosure Act shall be pursued only after efforts to secure voluntary compliance with that act have failed.

**10-16A-6. Investigations; binding arbitration; fines; enforcement. (1997)**

A. The secretary of state may conduct thorough examinations of statements and initiate investigations to determine whether the Financial Disclosure Act has been violated. Any person who believes that act has been violated may file a written complaint with the secretary of state. The secretary of state shall adopt procedures for processing complaints and notifications of violations.

B. If the secretary of state determines that a violation has occurred for which a penalty should be imposed, the secretary of state shall so notify the person charged and impose the penalty. If the person charged disputes the secretary of state's determination, the person charged

may request binding arbitration.

C. The arbitration decision shall be decided by a single arbitrator selected within ten days by the person against whom the penalty has been imposed from a list of five arbitrators provided by the secretary of state. No arbitrator may be a person subject to the Financial Disclosure Act, Campaign Reporting Act or Lobbyist Regulation Act. Arbitrators shall be considered to be independent contractors, not public officers or employees, and shall not be paid per diem and mileage.

D. The arbitrator may take any action the secretary of state is authorized to take. The arbitrator shall state the reasons for his decision in a written document that shall be a public record. The decision shall be final and binding. The decision shall be issued within thirty days of the conclusion of the hearing. Unless otherwise provided for in this section, or by rule or regulation adopted by the secretary of state, the procedures for the arbitration shall be governed by the Uniform Arbitration Act. No arbitrator shall be subject to liability for actions taken pursuant to this section.

E. Any person who files a statement or report after the deadline imposed by the Financial Disclosure Act or any person who files a false or incomplete statement or report is liable for and shall pay to the secretary of state, at or from the time initially required for the filing, fifty dollars (\$50.00) per day for each regular working day after the time required for the filing of the statement or report until the complete report is filed, up to a maximum of five thousand dollars (\$5,000).

F. The secretary of state may refer a matter to the attorney general or a district attorney for a civil injunctive or other appropriate order or enforcement.

#### **10-16A-7. Criminal penalties. (1993)**

Any person who knowingly and willfully violates any of the provisions of the Financial Disclosure Act is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than one year or both.

#### **10-16A-8. Enforcement; civil penalties. (1995)**

A. If the secretary of state reasonably believes that a person committed, or is about to commit, a violation of the Financial Disclosure Act, the secretary of state shall refer the matter to the attorney general or a district attorney for enforcement.

B. The attorney general or a district attorney may institute a civil action in district court if a violation has occurred or to prevent a violation of any provision of the Financial Disclosure Act. Relief may include a permanent or temporary injunction, a restraining order or any other appropriate order, including an order for a civil penalty of two hundred fifty dollars (\$250) for each violation not to exceed five thousand dollars (\$5,000).

**Gift Act**

**10-16B-1. Short title. (2007)**

This act may be cited as the "Gift Act".

**10-16B-2. Definitions. (2007)**

As used in the Gift Act:

A. "family" means a spouse and dependent children;

B. "gift" means any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift;

C. "market value" means the retail cost a person would incur to purchase a gift;

D. "restricted donor" means a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction; and

E. "state officer or employee" means any person who has been elected to, appointed to or hired for any state office and who receives compensation in the form of salary or is eligible for per diem or mileage.

#### **10-16B-3. Limitation on gifts. (2007)**

A. A state officer or employee or a candidate for state office, or that person's family, shall not knowingly accept from a restricted donor, and a restricted donor shall not knowingly donate to a state officer or employee or a candidate for state office, or that person's family, a gift of a market value greater than two hundred fifty dollars (\$250).

B. A lobbyist registered with the secretary of state, the lobbyist's employer or a government contractor shall not donate gifts of an aggregate market value greater than one thousand dollars (\$1,000) in a calendar year to any one state officer or employee or to any one candidate for state office.

C. A state officer or employee shall not solicit gifts for a charity from a business or corporation regulated by the state agency for which the state officer or employee works and shall not otherwise solicit donations for a charity in such a manner that it appears that the purpose of the donor in making the gift is to influence the state officer or employee in the performance of an official duty.

#### **10-16B-4. Penalties. (2007)**

A person who violates the provisions of the Gift Act is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978.